

Ukraine-Crisis

Recommendations for the requirement of ex- tended certificates of good conduct according to Section 72a Volume VII of the German Social Code (SGB)

INFORMATION SHEET for institutes and facilities for child and youth welfare which wish to employ pro- fessionals and volunteers from Ukraine

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We value helpfulness and expertise in childcare and educational services for child and young adult refugees!

The crisis in Ukraine has had numerous consequences, including in Nordrhein-Westfalen. Child and youth welfare services have been affected multilaterally with regards to their work – in international youth exchange programmes and cooperation with Ukrainian partners regarding youth policies, in educational work with children and young people and their questions related to war and displacement, in political educational work and in their efforts to promote international understanding and democracy in Europe. In educational facilities, these challenges meet a state of emergency which, in many cases, was already occurring: daycare centres for children, child and youth welfare services, youth organisations, schools, after-school clubs etc. are facing a lack of staffing resources: the large number of health-related absences are further heightening the skills shortage which has been affecting the institutions for years. For this reason, straightforward and expert help with the admission and support of child and young adult refugees in formal and informal educational facilities is welcomed. At present, the first Ukrainians, who have only recently arrived in Germany, are taking the initiative and supporting childcare for young refugees – not only for their own children. In many places, this represents important assistance.

From the point of view of child and youth welfare services, we would like to help to ensure that the support from Ukrainians, in particular for child and young adult refugees, which is necessary in many locations, is organised as professionally and safely as possible.

With all due urgency, it is necessary to sensitise employees/volunteers to ensure that boundaries are respected during contact with others, and to recommend some **minimum standards** to guarantee the well-being of young people, protect their rights and critically consider power structures, since neediness creates dependencies which can be exploited. A **personal relationship** is not only the prerequisite for the development and shaping of educational processes, but also provides an opportunity to gain power over other people. This leads to a **potential danger** of trust being exploited in order to make children and young people amenable to the wishes and preferences of others (see also Wiesner in SGB VIII comment, Section 72a, Margin No. 4, 6th edition, Munich 2022).

Child and youth welfare services aim to ensure children's well-being and rights, in order to prevent the abuse of power, assaults and violence!

This information sheet does not represent regulations in the sense of legal provisions. Rather, the Arbeitsgemeinschaft Kinder- und Jugendschutz (Workgroup for Child and Youth Protection, AJS) NRW e.V as an independent sponsor of child and youth welfare services intends to provide assistance with the adequate and pragmatic organisation of professional and voluntary involvement of refugees, to create educational frameworks and to sensitise those involved.

In public educational institutions and child and youth welfare institutions, various standards to ensure child and youth protection and protect children's rights have become established through the German Child Protection Act, the Act to Strengthen Children and Youth and the State Child Protection Act of NRW: Professionals, assistants and volunteers in daycare centres, schools or youth welfare institutions provide **extended certificates of good conduct** and sign **declarations of undertaking**, which contribute to sensitising staff members and form part of safety concepts, which are intended to safeguard processes to prevent violence and sexualised violence in a more comprehensive manner.

1. In general, to what extent is it possible to employ refugees from Ukraine?

With their temporary protection, refugees from Ukraine also have the basic entitlement to pursue a career in the countries of the European Union. They can not only be self-employed, but also enter into an employment contract with an employer (employment). Those who wish to enter into employment require a working permit from the local immigration authority, which is, however – after granting of a residence permit according to Section 24 of the Residence Act (AufenthG) – generally speaking, granted.

Those who do not yet have a residence permit, but who are entitled to a residence permit according to Section 24 AufenthG, may receive a probationary permit according to Section 81 (5) on presentation of a concrete job offer. It may then be possible to enter into employment – the Federal Ministry of the Interior (BMI) expressly wrote on 5 March 2022: “From the point of view of the BMI, it may be acceptable for employment to be taken up after issuance of the probationary permit ..., but before granting of a residence permit.”

An important topic when searching for a job is the question of [recognition](#) of your professional training and educational certificates. On the website www.anabin.de you can find important information and support, as well as at <https://www.anerkennungsdeutschland.de/html/de/index.php>.

Source: IDA e. V. zu Arbeitsmöglichkeiten von aus der Ukraine Geflüchteten: <https://www.idaev.de/themen/fluchtasyl/ukraine>

2. Extended certificate of good conduct as a requirement for entering into employment in child and youth welfare services

An integral part of safety concepts in child and youth welfare services according to Section 72a (3) SGB VIII is the obligation for those working there who have more than singular contact with children and young people to provide a so-called extended certificate of good conduct according to Section 30a, Federal Central Criminal Register Act (BZRG) (prerequisite: registration, identity card or residence permit). According to Section 72a (1), public youth welfare bodies may not employ anyone who does not provide this certificate of good conduct. The requirement is credited

with a deterrent effect; it applies strictly to all those who are to be employed in child and youth welfare services – regardless of their nationality.

Since 27 April 2012, citizens of other EU countries resident in Germany can be issued with a so-called “European certificate of good conduct”. In some cases, in an international context, the presentation of a document which is equivalent to a certificate of good conduct (so-called clearance certificate) may be considered.

The extended certificate of good conduct according to Section 72 a (3) SGB VIII

The particular focus here is on the inspection of relevant criminal offences which lead to a ban on employment. According to Section 72a (1), these include criminal offences related to

- Civil status, marriage and family
- Breach of duty of care or upbringing, Section 171 German Criminal Code (StGB)
- Offences against sexual self-determination Sections 174 – 181a, 182 – 184f StGB, sexual abuse, sexual assault, rape, promotion of sexual acts by minors, child and youth pornography, pornography, prostitution
- Offences against physical integrity Section 225 StGB
- Abuse of persons in one's charge
- Offences against personal liberty, Sections 232 – 233a, 234, 235 – 236 StGB Human trafficking, kidnapping, child trafficking

3. The obligation to submit proof should not be seen as an insurmountable obstacle: self declaration as an alternative

In order to prevent the obligation to submit proof according to Section 72a SGB VIII becoming an insurmountable bureaucratic hurdle, this requirement should be handled pragmatically, particularly in the case of those from non-EU countries who wish to make a meaningful contribution in child and youth welfare contexts, as not all countries keep similar criminal records. In addition to this, the relevant convictions are frequently difficult to investigate outside the EU or, in the case of refugees who were opponents of regimes, entries may be politically motivated or influenced, meaning that the presentation of such documents cannot be judged to have the same validity (see also Wiesner in SGB VIII comment, Section 72a, Margin No. 23, 6th edition, Munich 2022).

If the personal suitability of foreign employees cannot be established via the presentation of a document corresponding to a certificate of good conduct, as the document would not achieve the protective purpose intended by the legislature (objective impossibility), it therefore seems reasonable to use other means to resolve the suitability of potential employees and sensitise them appropriately with regards to the local understanding of the protection of children and young people. In the case of the care of related under-age refugees, the German Institute for Youth Human Services and Family Law (DIJuF) expressed in the context of the refugee crisis of 2015/2016 that the suitability of carers should be clarified in separate conversations with the under-age refugees, the foster family and, if possible, separate conversations with the individual carers (e.g. aunts/uncles) (see also DIJuF JAMt 2016, 251).

This is also consistent with the assessment of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) from April 2022 (see also Bulletin of the Association of Cities regarding police clearance certificates for everyday helpers and professionals from Ukraine, dated 8 April 2022):

“The presentation of extended certificates of good conduct according to Section 72a (1) Page 2 SGB VIII for the Ukrainians wishing to work in child and youth welfare services should, as a rule, not be viewed as significant with regards to pertinent prejudgements, as the individuals in question have only been in Germany for a short period. From our point of view, the presentation

of such an extended certificate of good conduct does not, in these cases, represent a suitable method to determine whether a disqualification from employment according to Section 72a (1) Page 1 SGB VIII should take place. The protective purpose intended by the legislature cannot be achieved in this way.

In this context, it must be established that the obligation to present an extended certificate of good conduct according to Section 72a (1) Page 2 SGB VIII is an intended obligation. This means that, in justified exceptional cases, the guidelines can be deviated from. However, in order to nevertheless ensure child protection as far as possible, the suitability of Ukrainian applicants for employment in child and youth welfare services must be verified in other manners or by other means. Above all, this can take the form of a personal conversation between the public institution and the person in question. In this conversation, the Ukrainian applicant should be informed in as gently a way as possible of the requirements of child protection and the legal requirements in Germany and sensitised with regards to these requirements. Special attention should be paid to indications of problematic (punishable) behaviour towards children and young people. Special training for the management of conversations in this area seems appropriate. The result of this conversation between the institution and the potential everyday helper, educator or similar should also be in particular the aim to sign a self-declaration following the guidelines of Section 72a SGB VII (declaration of commitment or declaration of honour).”

4. Sensitisation, self-declarations, declarations of undertaking and accompaniment of employees who have fled from Ukraine

Following these principles, with regards to refugees from Ukraine who are enthusiastic, wish to work in the context of child and youth welfare services and can be employed, the AJS NRW recommends handling the requirement for a certificate of good conduct pragmatically and clarifying their suitability in the sense of the protective purpose of Section 72a SGB VIII in the following manner, using three components and documenting these accordingly:

1. Explanatory and sensitisation conversation with regards to preventative child protection, including children's rights and legal provisions for the protection of children and young persons

2. Self-declaration and declaration of undertaking

3. Assurance of supervision of employment by experienced professionals or, if appropriate, other experienced employees or volunteers

Those who have fled to Germany in connection with the war which has been occurring in Ukraine since 24 February 2022 are, in most cases, not able to provide a certificate of good conduct according to Section 30a of the Federal Central Criminal Register Act (BZRG): Many of them have not (yet) registered and do not (yet) have residence permits, meaning that the question arises of whether they could even apply for a certificate of good conduct and of how meaningful this would be. Even if this were the case, the certificates of good conduct, which contain entries from the Federal Central Criminal Register, would regularly not contain any convictions. This would mean that the protective purpose intended by the legislature would not be fulfilled. An application for an EU certificate of good conduct can also be ruled out, as Ukraine is not a member of the EU. In view of the current circumstances, it would also hardly be feasible to request other relevant documents from the Ukrainian authorities. In this context, it would not be advantageous for the protection of children and young people to rigidly adhere to the requirement to provide a certificate of good conduct (as the BMFSFJ agrees). The purpose of Section 72a SGB VIII is not to exclude those who have fled from Ukraine and wish to work in the context of child and youth welfare services from potential employment solely because it is virtually impossible or scarcely reasonable for them to provide a certificate of good conduct. Given the current challenges, this would also be decidedly counter-productive and would send a negative signal to Ukrainian refugees who wish and are able to contribute. **For this reason, it is recommended to work with self-declarations and declarations of undertaking.**

For effective protection of children and young people, the most important aspects are attitude and

approach to personal interactions.

With regards to the employment of staff from Ukraine within the scope of contractual childcare or supervision responsibilities, such as in the context of daycare for children, child and youth work or schools, the responsible bodies should also ensure that this employment is supported and accompanied by professionals or employees already working there, who have fulfilled the requirements of Section 72a SGB VIII and who already know and implement the relevant child protection standards in their daily working routine. Ideally, this setting should also apply in the case of voluntary work. This especially applies if the individual's contact with children and young people will be more than occasional. The intention here is expressly not to associate motivated individuals from Ukraine with a negative connotation. Rather, the intention is to enhance the effectiveness of the relevant important standards regarding the protection of children and young people from abuse and regarding the safeguarding of children's rights, even when the relevant requirements, for example to provide an extended certificate of good conduct, prove futile.

5. Self declaration and declaration of undertaking as templates

There are templates disposable in German/Ukrainian/Russian/English: www.ajs.nrw